IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6097 of 2006

MANGI LAL
V/S
STATE & ORS.

Mr. BS SANDHU for Mr. HS SANDHU, for the petitioner

Mr. RAMESHWAR DAVE, DY. Govt. Advocate, for the State.

Mr. RK SINGHAL, for the respondent No.4.

Date of Order : 19.12.2006

HON'BLE MR. MOHAMMAD RAFIQ, J.

REPORTABLE **ORDER**

This matter has been listed on the application filed by the respondent no. 4 for vacation of the ad interim exparte stay order dt. 19.10.2006. The District Collector, Hanumangarh has by impugned order dated 3.10.2006 while allowing the appeal of respondent no. 4 has set aside the order of the District Supply Officer, Hanumangarh dt. 13.12.2005 passed under Clauses 8 and 9 of the Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976.

Arguments that have been advanced on the application under Article 226(3) are sufficient for deciding the main case, therefore, the matter is being

finally disposed of.

Learned counsel for the petitioner Shri B.S.Sandhu has assailed the validity of the order dt. 3.10.2006 on the ground that the District Collector, Hanumangarh having approved the order impugned in appeal was not competent in law to hear the appeal because that would amount to permitting him to act as a judge in his own cause which according to the counsel would be opposed to the principles laid down by Hon'ble the Supreme Court in Canara Bank Vs. V.K.Awasthy ((2005) 6 SCC-321) and Delhi Financial Corporation & Another Vs. Rajiv Anand ((2004)11 SCC-625). In response to the argument raised by the respondent that under Clause 22A of the aforesaid Order of 1976, the remedy of revision was available to the petitioner before the Commissioner, learned counsel for the petitioner has cited the judgment of Hon'ble the Supreme Court in Whirlpool Corporation Vs. Registrar of Trade Marks ((1998)8 SCC-1) in para-14 and 15 of which it was held that if an order has been passed in violation of principles of natural justice, or was wholly without jurisdiction, the objection of alternative remedy would not operate as a bar in regard to maintainability of the petition under Article 226 of the Constitution. Learned counsel further argued that allowing the order impugned would tantamount to allowing the Collector to review his own order in appeal whereas there is no provision in the aforesaid Order of 1976 for review

of the order.

On the other hand, Shri Rameshwar Dave, Dy.G.A. and Shri R.K.Singhal opposed the writ petition. According to them all these arguments which the petitioner is seeking to now raise before this Court can as well be raised and considered by the Commissioner in exercise of his power under Clause 22A of the aforesaid Order of 1976. It was argued that none of these arguments were raised, and especially the argument regarding competence of the Collector that he having approved the order impugned before him could not hear appeal, were raised by the petitioner before the Collector. He is, therefore, precluded from raising all these arguments before this Court. According to them, allegations against the petitioner are grave in nature, in that he used 16 such ration cards which were never disbursed or distributed to the holders thereof whereas the petitioner had shown the sale of kerosene oil against such ration cards. According to them the persons in whose favour such sale was shown were holding ration cards of other numbers. In other words what the respondents want to contend is that there were 16 such units in whose name there were two sets of ration cards though against two different numbers. In fact the petitioner, taking advantage of the situation indulged in malpractice as alleged, and therefore, when the District Supply Officer forfeited security amount to the extent of 70%(Rs. 700 only) and the

suspended license of the petitioner as a fair price dealer for only one year, the complainant namely the respondent no. 4 who is Sarpanch of the Gram Panchat concerned filed appeal thereagainst. It was argued that the Collector by the impugned order in appeal has merely remanded the matter to the District Supply Officer again for decision afresh. Matter will have to be again decided by the District Supply Officer after due opportunity of hearing to both the petitioner as well as respondent no.4. Impugned order according to them does not suffer from any legal infirmity because this order has been passed by the Collector in quasi judicial capacity. Even if Collector at one stage in administrative capacity has approved a lesser penalty, and against that order if the appeal of the respondent no. 4 has been allowed, this does not amount to reviewing the earlier order. Matter in any case is writ large and will have to be decided objectively by the District Supply Officer on the basis of the material on record after due application of mind afresh and upon hearing the parties. It was argued that this can be described as Collector deciding a matter in his own cause and the order impugned in fact was that of the District Supply Officer and not of the Collector. Even if that be taken so, substance of the order is mere remand of the matter to the District Supply Officer in which case the order passed against the petitioner has been set aside, and at the same time not replaced by an order in any manner disadvantageous to him. Fresh order, if

and when passed, would always be open to challenge by the petitioner and he will have all legal remedies available thereagainst.

I have considered the arguments advanced by the learned counsel for the parties, and perused the record.

The District Collector has merely remanded the matter to the District Supply Officer by the impugned order. What was challenged before District Collector was the order passed by the District Supply Officer whereby penalty of 70% of forfeiture of security amount and suspension of license of the petitioner for fair price dealership for one year was imposed. The District Collector on consideration of the matter has merely remanded the matter back to the District Supply Officer for deciding it afresh. It is a fact as rightly submitted by the learned counsel for the respondent that he has not passed any order which can be said to be against the petitioner in the sense that the order which in fact was against the petitioner has been set aside, while remanding the matter back to the District Supply Officer. This was an order which he passed as a quasi judicial authority whereas the order which was impugned before him in appeal was an order passed by the District Supply Officer. The petitioner in appeal which was filed before the District Collector has not raised any argument with regard to legal competence of the Collector

on the ground that he was precluded from hearing the appeal for any reason including that which is being raised before this Court. In the facts of this case, it cannot be said that any prejudice was caused to the petitioner just because the Collector heard and decided the appeal. In substance also no such prejudice is shown to have been caused because the impugned order has ultimately resulted in the remand of the matter, while setting aside the fresh order passed by the District Supply Officer.

I have respectfully studied the case law reference to which has been made by the learned counsel for the petitioner. In Canara Bank's case (supra) the Hon'ble Supreme Court was dealing with the concept of principles of natural justice and in para-14 of the judgment their lordships of the Hon'ble Supreme Court noted that “Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held”. While taking note of the various facets of the principles of natural justice, their lordships in para-16 further observed that

"Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left open. All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated". Having respectfully gone through the principles laid down in that case, I find that the judgment hardly renders any assistance to the petitioner in the facts of the present case. Coming to the judgment in Rajiv Anand's case (supra) it is to be found that their lordships of Hon'ble the Supreme Court in para-14 of the judgment categorically noted that "the authorities disclose that mere appointment of an officer of the corporation does not by itself bring into play the doctrine that "no man can be a judge in his own cause". For that doctrine to come into play it must be shown that the officer concerned has a personal bias or a personal interest or has personally acted in the matter concerned and/or has already taken a decision one way or the other which he may be interested in supporting". Hon'ble the Supreme Court noted this argument to be rejected as ultimately what was held was that the decision of the Delhi High Court is erroneous and cannot be sustained and the view taken by the Punjab and Haryana High Court is correct. It was held that the Managing Director of a financial corporation can be appointed as an authority under Section 32-G of the State Financial Corporation Act. On perusing the view taken by their lordships in the said

case, I do not find that the judgment can have any application to the facts of the present case. All that the District Collector has done is to remand the matter back to the District Supply Officer, and therefore, the order which is impugned has not resulted in any prejudice to the petitioner which can be said to be real and genuine one, inasmuch as the petitioner himself having not raised any ground of bias or prejudice against the Collector when the appeal was laid before him, cannot be now permitted for the first time to raise this argument before this Court.

For what has been discussed above, I do not find any merit in this writ petition. The writ petition is dismissed. I however deem it appropriate to direct the District Supply Officer to decide the matter within a period of three months from the date of service of copy of this order. It needs to be mentioned that in doing so he will be deciding the matter afresh uninfluenced by the findings recorded and discussions made by the District Collector.

(MOHAMMAD RAFIQ),J.

/Sushil/